In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. 2nd Bail Appln. No.5870/2007
Sunil Sooji ***Versus*** State

Date of Order ::: 11/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. SR Bajwa)
Mr. VR Bajwa), for petitioner
Mr. Arun Sharma, Public Prosecutor
Mr. S.K.Gupta, for complainant

Instant 2nd bail application U/s 439, CrPC has been filed by accused Sunil Sooji while 1st one (Cr. Msc. Bail Appln. No.4381/2006) was allowed by a co-ordinate Bench of this Court releasing him U/s 439 CrPC in FIR-263/02 PS Sodala (Jaipur) vide order dt. 05/10/2006 but while allowing Special Leave Petition (Cr) No.6630/06, the Apex Court set aside order dt. 05/10/06 (supra) and cancelled the bail of petitioner vide order dt.03/08/07 and accordingly remanded the matter back to this Court for consideration afresh.

Instant bail application was earlier listed before the co-ordinate Bench which has earlier granted bail to the petitioner but observed to list on 30/08/07 before another Bench, on which the matter has come up before this Court under orders of the Chief Justice.

Initially FIR-263/2002 was registered at PS

Sodala (Jaipur) for offence U/Ss 302, IPC on a written report lodged by Deepak Singchi for murder of Brij Kishore Heda (since deceased) and after investigation ultimately, the police filed charge sheet against petitioner as also other accused persons for offences U/Ss 302, 120-B, 147 & 149, IPC – taking note whereof, cognizance was taken against petitioner & other co-accused and the case was committed to the Court of Sessions for trial, which is pending in Sessions Case-56/2006 (State Vs. Sooji & Ors) before Addl. Sess. Judge (Fast Track) No.2, Jaipur City Jaipur.

Petitioner was arrested in January, 2006; hence applied for bail before the trial Judge but was declined and accordingly Cr. Bail Appln. No.4381/06 was filed wherein this Court granted bail U/s 439, CrPC to the petitioner vide order dt.05/10/06 – in pursuance whereof, he was set at liberty – against which complainant preferred SLP (Cr) 6630/06 (Deepak Singchi Vs. State & Another) before Apex Court seeking cancellation of bail granted to the petitioner and after hearing parties, vide order dt.03/08/07, the Apex Court set aside the order releasing petitioner on bail U/s 439, CrPC and remanded the matter to this Court. Hence this application.

Counsel appearing for petitioner vehemently submits that test identification in question was made after four years of alleged incident where FIR was registered in the year 2002 and after detailed investigation for about two years, the police decided to file negative final report-162/04 and later on the matter was re-opened and challan was filed against petitioner without there being any material for commission of offence U/s 302, IPC and he was arrested in January, 2006. Counsel submits that there is no direct evidence and criminal case at hand is completely based on circumstantial evidence and even in course of trial statements of prosecution witnesses were recorded but the prosecution is not able to prove the motive or attributing culpable act of conspiracy if any hatched with other co-accused Nasib through cellular conversations with Nasib during alleged period on 17/18/19th September, 2002 – on the basis whereof, no adverse inference can be drawn and no material came on record by which it shows that any prosecution witness deposed about petitioner having any link with co-accused Naseeb or other co-accused Rohitash & Dharmendra who, as alleged were contract killers and were hired and the confession made by one of accused Dharmendra about alleged incident of 18/09/02 having conspiracy

hatched is not admissible in view of Section 27 of Evidence Act.

Public Prosecutor & Counsel for complainant while opposing the instant application jointly submit that bail application of co-accused Naseeb came up before this Court after the present petitioner was earlier granted bail vide order dt.05/10/06; yet still after examining contentions in details, bail to Naseeb was declined while rejecting his application vide order dt.07/02/07 Counsel further submits that the prosecution has already examined in all 41 witnesses out of list of 57 witnesses – 9 whereof have been left out and 4 prosecution witnesses have been summoned to be examined on the date fixed on 03/12/07 in course of trial, which is being conducted on day to day basis. Counsel also submits that petitioner is the main accused and main conspirator who hired killer through co-accused Naseeb Singh and on whose behest, the hired killer committed murder of the deceased and there was direct animosity between the deceased and present petitioner as both were dealing in property business and known to each other and that apart, conspiracy being hatched by present petitioner, there was long conversations between him and co-accused Naseeb Singh through cellular on relevant dates 17th to 19th September, 2002 while the

deceased was killed on 18/09/02 and it was present petitioner (accused) having animosity being highly competitor in property business, and it was he who planned to kill the deceased through hired killers - co-accused Rohitash & Dharmendra.

This Court has heard Counsel for petitionr and complainant alongwith Public Prosecutor and with their assistance, examined material on record and case diary. It has come during investigation that before the deceased was killed, present petitioner took co-accused hired killers to the deceased house to make him familiar with persons who were supposed to kill, which prima facie shows his involvement in the commission of culpable act of crime, which in no manner can be ruled out. The learned trial Judge while considering bail application U/s 439, CrPC has also considered in details and taking note of facts assigned reasons rejecting bail application to present petitioner vide order dt.12/07/06. Bail application of co-accused Naseeb Singh has also been dismissed by this Court vide order dt.27/12/2006 and it has been brought to the notice of this Court that bail application preferred by Naseeb Singh before Apex Court has also been dismissed. It was a case involving of hired killers who have murdered deceased Brij Kishore Heda on fateful night of 18/09/02. As

per post mortem report, deceased Heda died due to gun shot injuries; long conversation between present petitioner & co-accused Naseeb Singh; both being property dealers & competitors in business and co-accused Naseeb Singh even as submitted by petitioner, was his employee and because of strained relations, it was planned to murder the deceased; all the facts came on record prima facie show that through Naseeb Singh co-accused contract killers were hired, to whom accommodation was arranged in Hotel Ranjit and both the hired killers were taken to the house of deceased with a view to make him familiar with them, are attributing circumstances appearing on record. All these incriminating circumstances are sufficient to decline the post arrest bail to present petitioner.

However, it cannot be lost sight of fact that by now prosecution has already examined almost all witnesses and the trial is going on day to day basis and at the fag end. However, it will not be proper to express any opinion on merits, may be on the issues raised by Counsel for petitioner at this stage of consideration of bail application afresh in pursuance of order of the Apex Court (supra), about genesis of commission of crime or motive behind culpable act of murder or even conspiracy. This Court does not find any justification to enlarge the

petitioner on post-arrest bail U/s 439, CrPC.

Consequently, 2nd bail application fails and is hereby dismissed. However, the trial Judge pending trial will not be influenced by observations made (supra).

(**Ajay Rastogi), J.**

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